

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD E. MOORE
Claimant

VS.

WESTAR ENERGY, INC.
Self-Insured Respondent

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Docket No. 1,016,186

ORDER

Claimant appealed the February 21, 2005, Award entered by Administrative Law Judge Bryce D. Benedict. The Board heard oral argument on July 20, 2005.

APPEARANCES

Roger D. Fincher of Topeka, Kansas, appeared for claimant. Gary E. Laughlin of Topeka, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an April 30, 2003, work-related injury to claimant's back. In the February 21, 2005, Award, Judge Benedict denied claimant's request for workers compensation benefits, finding claimant failed to make timely written claim.

Claimant contends Judge Benedict erred. Claimant contends that an injury/illness report he submitted to respondent on the date of accident served as his written claim. In addition, claimant alleges respondent did not file an accident report with the Division of Workers Compensation and, therefore, claimant argues the written claim he filed in April 2004 is timely pursuant to K.S.A. 44-557. Claimant requests the Board to reverse the February 21, 2005, Award and to grant him permanent disability benefits for a nine percent whole person functional impairment.

Respondent contends the Award should be affirmed. Respondent argues claimant's claim for workers compensation benefits is barred by the provisions of K.S.A. 44-520a as the injury/illness report claimant submitted to respondent does not satisfy the requirements of that statute. Moreover, respondent contends that in June 2003 it filed an accident report with the Division of Workers Compensation and in July 2003 it last made payment for medical compensation. Therefore, respondent argues the written claim filed by claimant in April 2004 was not timely.

The issues before the Board on this appeal are:

1. Did claimant give respondent a timely written claim for workers compensation benefits?
2. If so, what is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the February 21, 2005, Award should be affirmed. The Board agrees with the Judge's conclusion that claimant failed to prove he provided the respondent with a timely written claim for workers compensation benefits.

K.S.A. 44-520a(a) requires an injured worker to serve upon his or her employer written claim for compensation within 200 days of the accident date or the last payment of compensation, whichever is later. But under certain circumstances, the time period for serving that written claim is extended to one year. K.S.A. 44-557(a) requires employers to report accidents to the Director of the Division of Workers Compensation within 28 days of receiving knowledge of an accident that wholly or partially incapacitates a worker from working for more than the remainder of the day or shift on which the injuries were sustained. K.S.A. 44-557(c) provides:

No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by serving upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it.¹ The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520.² Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation or provide medical benefits. In *Fitzwater*,³ the Kansas Supreme Court described the test as follows:

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The Board affirms Judge Benedict's finding that claimant failed to prove the accident report claimant prepared immediately after the accident served as a written claim for workers compensation benefits. The evidence is uncontradicted that claimant was not requesting medical treatment or other benefits under the Workers Compensation Act at the time the document was prepared. Moreover, respondent filed its report of accident with the Division of Workers Compensation in June 2003 and in that same month claimant received the last medical treatment that respondent paid, which respondent treated as unauthorized medical care. Consequently, claimant's time period for serving written claim had expired when, on April 1, 2004, claimant gave respondent a document entitled Written Claim for Compensation.

Further, the Board adopts the Judge's analysis that in this instance the respondent was not required to file an accident report. Consequently, the time for filing written claim was not extended. Although the result may seem harsh, it appears redress lies with the legislature.

Claimant failed to prove timely written claim. Accordingly, the February 21, 2005, Award should be affirmed.

¹ *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

² *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

³ *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

AWARD

WHEREFORE, the Board affirms the February 21, 2005, Award entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of August, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
 Gary E. Laughlin, Attorney for Respondent
 Bryce D. Benedict, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director